TAXATION — COLLECTION OF TAXES — COUNTERCLAIM. — MORGANTON SCHOOL v. MCDOWELL, 72 S. E., 108 (N. C.).—*Held*, a sheriff cannot, when sued to recover the amount of taxes collected by him, set up a counterclaim against the State.

It is generally held that no set-off can be made of tax money while on the way from the tax-payer to the treasurer. *Waterbury v. Lawler*, 51 Conn., 171; *Com. v. Rodes*, 5 Mon., 318; *Wilson v. Lewiston*, 1 W. & Seg't., 428. For a tax in its essential characteristics is not a debt, or in the nature of a debt. *City of Camden v. Allen*, 2 Dutcher, 398; *Himmelman v. Spanagel*, 39 Cal., 389; *Shaw v. Pickett*, 16 Ver., 486. In *Finnegan v. City of Fernandina*, 15 Fla., 379, the Court said "debt is the subject matter of a set-off, and is liable to set-off; a tax is neither." So a sheriff cannot plead a set-off in a suit against him for taxes due and owing. *State & Guilford v. Ga. Co.*, 112 N. C., 34. The same is true of a collector of revenue. *Com. v. Rodes*, 21 Ky., 318. Nothing but a *quietus* from the auditor can be pleaded. *Com. v. Rodes, supra.* So where one pleads payment, the burden of proof is on him to show such payment. *Walling v. Morgan Co.*, 126 Ala., 326. But a tax collector may claim compensation due him for the services incident to the collection, but not compensation for services in a distinct office. *State v. Floyd*, 28 La. Ann., 553. Nor can he make himself a creditor against the State by purchasing claims against the State. *Frier v. State*, 11 Fla., 300.

WITNESSES—EXAMINATION—REFRESHING MEMORY.—ERDMAN V. STATE, 134 N. W., (NEB.). 258.—*Held*, that a newspaper reporter testifying as a witness could not refresh his memory by reference to a newspaper article based upon his original notes, the said newspaper article being a correct reproduction of his original notes. Barnes and Fawcett, JJ., *dissenting.*

The old rule that the witness must be able to swear from memory is now generally obsolete. *Downer v. Rowell*, 24 Vt., 343. The general rule is that a witness may use a memorandum to refresh his memory if he has an independent recollection of the facts. *Stewart v. Morris*, 88 Fed., 461; *Southern Ry. Co. v. State*, 165 Ind., 613. A few courts have held that an independent recollection is unnecessary. *Heyert v. Reubman*, 86 N. Y. S., 797; *Loose v. State*, 120 Wis., 115. A court reporter may give evidence from his notes even though he has no independent recollection of the facts. *Miles v. Walker*, 66 Neb., 728. A surveyor was allowed to refresh his memory from a copy of the minutes of his survey. *Miller v. Shumway*, 135 Mich., 654. The rule is established that a witness may use any memorandum or instrument to refresh his memory, provided he ultimately testifies from his own recollection as thus refreshed. *Shrouder v. State*, 121 Ga., 615; *Commonwealth v. Burton*, 183 Mass., 461; *Ascheim v. Levinsohn*, 91 N. Y. Supp., 157.